motion for judgment in the State court, it was not filed in that court within twenty-one days after service of the notice of motion for judgment as required by Rule 3:5. As stated, service was made on February 13 and the document was not filed in the State court until March 13. The twenty-one days had in fact elapsed before it was filed in the Federal court on March 9.

Title 28, § 1446(e), U.S.C.A., *supra*, provides that after the removal is effected "the State court shall proceed no further unless and until the case is remanded". After compliance with the removal statute the jurisdiction of the State court is suspended until there has been a remand, *Lowe v. Jacobs*, 5 Cir., 243 F. 2d 432, and cases there cited; and in the interim pleadings cannot be effectively filed in the State court; *Hopson v. North American Ins. Co.*, 71 Idaho 461, 233 P. 2d 799, 25 A.L.R. 2d 1040, and Anno. 1045; *Beleos v. Life & Casualty Ins. Co.*, (DC S.C.), 161 F. Supp. 627.

In addition to the copy of the answer and counterclaim, says the defendant, "there was on file the plaintiff's Answer to the defendant's Counterclaim". There is in the court file what purports to be a copy of the plaintiff's reply to the defendant's counterclaim as filed in the Federal court. It appears to have been mailed to the clerk of the Federal court on March 23, 1961, by counsel other than the counsel who represented the plaintiff in the motion for judgment. It was not filed in the State court at any time, so far as appears from this record, and was of no effect with respect to the State court proceeding. There is also in the record an order entered by the Circuit Court on November 16, 1961, dismissing with prejudice the counterclaim of the defendant against the plaintiff, the order reciting that the matters at issue in the counterclaim had been compromised and settled. This order was not endorsed as required by Rule 3:16 by counsel who represented the plaintiff in this motion for judgment and it is not indicated

that plaintiff or her counsel had any knowledge of it. It could have no effect on the default judgment previously entered for the plaintiff on October 18, 1961.

Clearly the defendant was in default when the case was remanded on September 26, 1961. Under the specific terms of Rule 3:19, *supra*, he was not entitled to notice of any further proceedings in the case, including the time of hearing evidence as to damages, and the fixing of the amount thereof by the court. Nothing that appears in the record affords any basis for the contention of the defendant that the plaintiff waived her right to the default judgment under Rule 3:19. *Cf. The Covington Virginian* v. *Woods*, 182 Va. 538, 547 *ff*., 29 S.E. 2d 406, 410-11; 92 C.J.S. Waiver, pp. 1041 *ff*.

On his second assignment the defendant contends that the court should have extended the time for his filing of responsive pleadings as permitted by Rule 3:13, which provides that the time allowed for filing pleadings may be extended by the court in its discretion, even though the time fixed has already expired. However, as pointed out by plaintiff in her brief, no motion was ever made for such an extension nor any reason given for exercising such discretion. Defendant's argument is that our Rules should be construed so as to do substantial justice, and that the trial court under the circumstances should have set aside the default judgment and permitted "a trial of the issues".

Rules 3:5 and 3:19 are plain and need no construing. The defendant must file his responsive pleading within the twenty-one days prescribed by Rule 3:5 or suffer the consequences prescribed by Rule 3:19 unless the filing time is extended by the court at its discretion. As stated, the court was not requested to exercise that discretion. Defendant's motion and amended motion requested the court to set aside the default judgment primarily because of the proceedings in the Federal court. During that period all proceedings in the State court were suspended and defend-

ant's motions offered no excuse for failing to file responsive pleadings in the State court in the time required, and presented no reason, in fact no request, for extending that time. Defendant's effort to remove the case to the Federal court cannot restore to him a right already lost to file pleadings in the State court.

In *Cooper* v. *Davis*, 199 Va. 472, 100 S.E. 2d 691, the trial court rejected defendant's grounds of defense and affidavit filed some months after the entry of a default judgment because they did not present a reasonable excuse for the defendant's failure to act within the time required by Rule 3:5, and defendant was not allowed to defend on the merits in a subsequent jury trial to assess damages. We affirmed the judgment and said:

"The trouble with the defendant's contention is that his diligent pursuit for judicial relief was begun too late. Rule 3:5 'contemplates and requires that a defendant file his responsive pleadings "within twenty-one (21) days after service on him of the notice of motion for judgment." ' (*Herndon* v. *Wickham*, 198 Va. 824, 826, 97 S.E. 2d 5, 7.) The notice of motion for judgment served on the defendant, prepared in accordance with Rule 3:3, so told him in plain language. Yet the defendant made no attempt to file the required pleadings for more than four months after the service of the notice on him." 199 Va. at 476, 100 S.E. 2d at 694.

In *McCanna* v. *Mutual Investment & Agency Co.*, 37 N.M. 597, 26 P. 2d 231, a case brought in the State court was removed to a Federal court and was afterwards remanded to the State court where a default judgment was entered against defendants. Defendants later filed a motion to vacate the judgment, alleging that they had a meritorious defense and that the default judgment was rendered on the day the case was remanded. Their motion was overruled and defendants appealed, contending that in justice

to their cause they should be allowed to defend on the merits. In affirming the trial court's decision the Supreme Court said:

"• • • To do justice to both litigants herein we must apply the principles of law and adhere to the established rules of practice and procedure which are known and established in this jurisdiction, for, otherwise, what seems justice to one would appear as injustice to another. Justice within the law is justice to all. • • •." 37 N.M. at 598, 26 P. 2d at 231-2.

Rules 3:5 and 3:19 were adopted in the interest of expediting the maturing and hearing of cases. A defendant is warned when he is served with process as to the time within which he must make his response. He may have an extension of that time if he makes proper application and shows reasonable cause therefor. Otherwise the Rules are to be applied according to their terms.

We find no error in the action of the trial court and the judgment appealed from is accordingly

Affirmed.

APPENDIX B

28 U.S.C.A. 1446. Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.

(b) The petition for removal of a civil action or proceeding shall be filed within twenty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within twenty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a petition for removal may be filed within twenty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) The petition for removal of a criminal prosecution may be filed at any time before trial.

(d) Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond with good and sufficient surety conditioned that the defendant or defendants will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

(e) Promptly after the filing of such petition and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(f) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.